IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 851 OF 2006

M/s Shreeji Constructions .. Petitioners

V/s

M/s Vikas Housing Ltd. & Anr. .. Respondents

Mr.Shailesh Shah with Mr.Rohit Shetty for the Petitioners.

Mr.Birendra B. Saraf i/b Adhia & Adhia for Respondents Nos.1 and 2.

Mr.G.D. Utangale for Respondent No.3.

Mr.P.G. Sawant, A.G.P. for Respondent No.4.

CORAM : H.L. GOKHALE & S.R. DONGAONKAR, JJ.

DATE : 24TH APRIL 2006

P.C. :

1. Heard the counsel for the parties.

2. The Petitioners herein claim to be holding the Power of Attorney of Respondent No.1 who was stated to be the owner of the concerned parcel of land at Goregaon (East). It is the case of the Petitioners that they were authorised by Respondent No.1 to develop this scheme with the permission of S.R.A. and later on Petitioners brought in Respondent No.2. The grievance of the Petitioners is that though the Petitioners have

terminated the authority of Respondent No.2, the scheme is going ahead through Respondent No.2. The petition seeks to quash the Letter of Intent issued by the S.R.A. and also the declaration that Respondent No.2 had no authority at all to develop the particular scheme.

3. Mr.Shah appearing for the Petitioners points out that the Power of Attorney given to Respondent No.2 is given by one Imtiyaz Ahmed for Respondent No.1 though this Imtiyaz Ahmed is the person behind Respondent No.1. Mr.Saraf for Respondent No.1, on the other hand, points out that the Petitioners herein had filed a suit earlier in the Bombay City Civil Court being Suit No.3565 of 2005. In that suit also, an injunction was sought against M/s Jyoti Builders as well as Respondent No.1. A declaration was sought that Respondents No.1 and 2 have no right to start and proceed with the construction on the concerned plot of land. Mr.Saraf further points out that thereafter the matter has been referred to an arbitration. An injunction was also sought in that suit. Surely, the arbitrator is not going to grant any injunction and only the claim for damages will be considered by the arbitrator.

4. The right, which the Petitioners are claiming, is basically on the basis of a development agreement. There cannot be any specific performance of any such

agreement for development. That has been the view taken by this Court time and again. The arbitration is, therefore, the correct remedy where possibly the Petitioners may get claim for damages against Respondents No.1 and 2.

5. As far as the Letter of Intent is concerned, that is an aspect to be decided by Respondent No.3 - S.R.A., and after considering the totality of the factors if it has granted it in favour of Respondent No.1 and 2, a party which is claiming an earlier development agreement cannot block the scheme which is to come for the betterment of the slum dwellers.

6. In the circumstances, there is no merit in the petition. Petition is rejected.

(H.L. GOKHALE, J.)

(S.R. DONGAONKAR, J.)